

# Weber Declaration

## Exhibit 26

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UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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HACHETTE BOOK GROUP, INC.,  
HARPERCOLLINS PUBLISHERS LLC,  
JOHN WILEY & SONS, INC., and  
PENGUIN RANDOM HOUSE LLC,

Plaintiffs,

vs.

Case No.

1:20-cv-04160-JGK

INTERNET ARCHIVE and DOES 1  
through 5, inclusive,  
Defendants.

-----x

VIDEOTAPED RULE 30(B)(1) AND RULE 30(B)(6)  
DEPOSITION OF HACHETTE BOOK GROUP  
CORPORATE DESIGNEE: SKIP DYE  
Remote Zoom Proceedings  
Thursday, November 18, 2021

Job No. 4867650  
Reported By: Lynne Ledanois, CSR 6811  
Pages 1 - 390

|    |                                       |         |
|----|---------------------------------------|---------|
| 1  | for a number of reasons."             | 12:25PM |
| 2  | And we've talked about two            | 12:25PM |
| 3  | of those reasons, their view of       | 12:25PM |
| 4  | ownership and their relationship with | 12:25PM |
| 5  | the Internet Archive.                 | 12:25PM |
| 6  | Were there any others?                | 12:25PM |
| 7  | A The SimplyE app was an app          | 12:25PM |
| 8  | that was created by the New York      | 12:25PM |
| 9  | Public Library and some other         | 12:25PM |
| 10 | libraries I referred to.              | 12:25PM |
| 11 | It was having problems                | 12:25PM |
| 12 | crashing. Some of our other           | 12:25PM |
| 13 | aggregators, Baker & Taylor for one,  | 12:26PM |
| 14 | was also using the SimplyE app along  | 12:26PM |
| 15 | with some other apps that they had    | 12:26PM |
| 16 | well.                                 | 12:26PM |
| 17 | And so it was constantly              | 12:26PM |
| 18 | having -- it being down.              | 12:26PM |
| 19 | Q Okay. Any other reasons?            | 12:26PM |
| 20 | A Not that I recall.                  | 12:26PM |
| 21 | Q Okay. One last question             | 12:26PM |
| 22 | about this.                           | 12:26PM |
| 23 | If you go to the second page          | 12:26PM |
| 24 | of this thread, at the very top, the  | 12:26PM |
| 25 | sentence that says, in an email you   | 12:26PM |

|    |  |         |
|----|--|---------|
| 1  | wrote, "The Internet Archive is trying | 12:26PM |
| 2  | to use an as yet unproven legal        | 12:26PM |
| 3  | argument called 'controlled digital    | 12:26PM |
| 4  | lending' as legal cover for the Open   | 12:26PM |
| 5  | Library."                              | 12:26PM |
| 6  | Do you see that?                       | 12:26PM |
| 7  | A Yes.                                 | 12:26PM |
| 8  | Q Do you remember what you             | 12:26PM |
| 9  | meant by that sentence?                | 12:26PM |
| 10 | A That -- yes, that they               | 12:26PM |
| 11 | were -- Internet Archive was believing | 12:27PM |
| 12 | and supporting the whole idea of       | 12:27PM |
| 13 | controlled digital lending. And they   | 12:27PM |
| 14 | believed that the open -- that they -- | 12:27PM |
| 15 | was supporting some of the people      | 12:27PM |
| 16 | on -- it's a sort of internal          | 12:27PM |
| 17 | controversy at DPL itself was that.    | 12:27PM |
| 18 | So that's what that was about.         | 12:27PM |
| 19 | Q What is your understanding           | 12:27PM |
| 20 | of "controlled digital lending" as     | 12:27PM |
| 21 | you've used the term in your email     | 12:27PM |
| 22 | here?                                  | 12:27PM |
| 23 | A Controlled digital lending           | 12:27PM |
| 24 | is if an institution or a library has  | 12:27PM |
| 25 | a physical copy of a title that they   | 12:27PM |

|   |                                      |         |
|---|--------------------------------------|---------|
| 1 | can scan and put that book aside,    | 12:27PM |
| 2 | physical book aside and do a         | 12:27PM |
| 3 | one-for-one lend of the digital scan | 12:27PM |
| 4 | that they made of that book.         | 12:27PM |

|   |                              |         |
|---|------------------------------|---------|
| 5 | Q And by "one-for-one lend," | 12:27PM |
| 6 | what do you mean?            | 12:28PM |

|    |   |  |         |
|----|---|--|---------|
| 7  | A | That it is one book, one               | 12:28PM |
| 8  |   | user. So if they have scanned that     | 12:28PM |
| 9  |   | book, that physical book, they cannot  | 12:28PM |
| 10 |   | lend out that physical book if they've | 12:28PM |
| 11 |   | also lent out the scanned version of   | 12:28PM |
| 12 |   | that book, both of which is not -- if  | 12:28PM |
| 13 |   | it is under copyright is illegal to    | 12:28PM |
| 14 |   | do.                                    | 12:28PM |

|    |   |                          |         |
|----|---|--------------------------|---------|
| 15 | Q | Why do you think that is | 12:28PM |
| 16 |   | illegal to do?           | 12:28PM |

|    |   |  |         |
|----|---|--|---------|
| 17 | A | Because an e-Book is not the           | 12:28PM |
| 18 |   | same thing as a hardcover book. An     | 12:28PM |
| 19 |   | e-Book is lendable umpteen multiple of | 12:28PM |
| 20 |   | times.                                 | 12:28PM |

|    |                                       |         |
|----|---------------------------------------|---------|
| 21 | They are not equal, they are          | 12:28PM |
| 22 | not the same. An e-Book can be -- one | 12:28PM |
| 23 | file could satisfy the needs of the   | 12:28PM |
| 24 | world.                                | 12:28PM |

25 Q What do you mean by "satisfy" 12:28PM

|    |  |         |
|----|--|---------|
| 1  | the needs of the world"?               | 12:28PM |
| 2  | A That one e-Book file could           | 12:28PM |
| 3  | be checked out a multitude of times.   | 12:29PM |
| 4  | You don't need to basically            | 12:29PM |
| 5  | distribute -- like a physical book     | 12:29PM |
| 6  | you'd have to distribute multiple      | 12:29PM |
| 7  | copies of.                             | 12:29PM |
| 8  | For an e-Book, you can just,           | 12:29PM |
| 9  | with very little to no cost, make a    | 12:29PM |
| 10 | copy and distribute that e-Book.       | 12:29PM |
| 11 | Q Okay. I want to switch               | 12:29PM |
| 12 | gears a little bit here. I wanted to   | 12:29PM |
| 13 | ask you about the type of market       | 12:29PM |
| 14 | research and analysis that PRH does.   | 12:29PM |
| 15 | And my first question in               | 12:29PM |
| 16 | this line is: Has PRH studied or       | 12:29PM |
| 17 | analyzed how long after publication of | 12:29PM |
| 18 | a title peak sales of that title       | 12:29PM |
| 19 | typically occur?                       | 12:29PM |
| 20 | MS. STEINMAN: Objection. I             | 12:29PM |
| 21 | would also note that is not a          | 12:29PM |
| 22 | 30(b)(6) topic of Mr. Dye. He can      | 12:29PM |
| 23 | answer if he knows within his          | 12:29PM |
| 24 | personal knowledge.                    | 12:29PM |
| 25 | MS. LANIER: He's designated            | 12:29PM |

|    |                                       |         |
|----|---------------------------------------|---------|
| 1  | for Topic 17 and that's literally     | 12:29PM |
| 2  | in Topic 17.                          | 12:30PM |
| 3  | Q Go ahead, Mr. Dye.                  | 12:30PM |
| 4  | A I know that many groups in          | 12:30PM |
| 5  | our -- look at the life span of a     | 12:30PM |
| 6  | title and there's sales up and down.  | 12:30PM |
| 7  | So I am aware of a variety            | 12:30PM |
| 8  | of stuff as people look at to acquire | 12:30PM |
| 9  | new books by the same author, look to | 12:30PM |
| 10 | see different subject matters.        | 12:30PM |
| 11 | Q Okay. When is the -- when           | 12:30PM |
| 12 | is the typical peak of sales relative | 12:30PM |
| 13 | to when a title is published?         | 12:30PM |
| 14 | MS. STEINMAN: Could we                | 12:30PM |
| 15 | pause for a second? Off the           | 12:30PM |
| 16 | record.                               | 12:30PM |
| 17 | I do not believe this is one          | 12:30PM |
| 18 | of his topics. So give me a           | 12:30PM |
| 19 | second, please.                       | 12:30PM |
| 20 | MS. LANIER: Should we go              | 12:30PM |
| 21 | off the record?                       | 12:30PM |
| 22 | MS. STEINMAN: Yes.                    | 12:30PM |
| 23 | MS. LANIER: Let's go off              | 12:30PM |
| 24 | the record, John. Thank you.          | 12:30PM |
| 25 | VIDEOGRAPHER: We're off the           | 12:30PM |

|    |                                       |         |
|----|---------------------------------------|---------|
| 1  | record. It's 12:30 p.m.               | 12:30PM |
| 2  | (Recess taken.)                       | 12:30PM |
| 3  | VIDEOGRAPHER: We're back on           | 12:31PM |
| 4  | the record. It's 12:31 p.m.           | 12:31PM |
| 5  | MS. LANIER: Ms. Steinman              | 12:31PM |
| 6  | has objected that this question is    | 12:31PM |
| 7  | outside of Topic 17 and it falls      | 12:32PM |
| 8  | under Topic 17G. At any rate, I       | 12:32PM |
| 9  | will pose the question again.         | 12:32PM |
| 10 | MS. STEINMAN: Yes. And                | 12:32PM |
| 11 | that was revised by the parties in    | 12:32PM |
| 12 | their agreement.                      | 12:32PM |
| 13 | Again, you can go ahead and           | 12:32PM |
| 14 | question him, but this is not a       | 12:32PM |
| 15 | 30(b)(6) topic.                       | 12:32PM |
| 16 | MS. LANIER: Objections                | 12:32PM |
| 17 | noted.                                | 12:32PM |
| 18 | Q When for a typical book does        | 12:32PM |
| 19 | the peak sales revenue occur relative | 12:32PM |
| 20 | to when that book is published?       | 12:32PM |
| 21 | A I can't speculate for that.         | 12:32PM |
| 22 | All children are different, as I say. | 12:32PM |
| 23 | Q Okay. For a nonfiction              | 12:32PM |
| 24 | book, when is the typical peak of     | 12:32PM |
| 25 | sales relative to their publication?  | 12:32PM |



|   |   |                                     |         |
|---|---|-------------------------------------|---------|
| 1 | A | Again, I cannot -- sorry,           | 12:32PM |
| 2 |   | but I cannot really address that    | 12:32PM |
| 3 |   | because every book has its own life | 12:32PM |
| 4 |   | and its own story.                  | 12:32PM |

|   |   |                                     |         |
|---|---|-------------------------------------|---------|
| 5 | Q | You mentioned that PRH and          | 12:33PM |
| 6 |   | different divisions in PRH have     | 12:33PM |
| 7 |   | studied those or analyzed when peak | 12:33PM |
| 8 |   | sales of titles occur.              | 12:33PM |

|    |                            |         |
|----|----------------------------|---------|
| 9  | What have been the results | 12:33PM |
| 10 | of those studies?          | 12:33PM |

|    |                          |         |
|----|--------------------------|---------|
| 11 | MS. STEINMAN: Objection. | 12:33PM |
|----|--------------------------|---------|

|    |                                    |         |
|----|------------------------------------|---------|
| 12 | THE WITNESS: I don't know          | 12:33PM |
| 13 | what has been the results of those | 12:33PM |
| 14 | studies. I only know when we talk  | 12:33PM |
| 15 | about that, you know, books, gift  | 12:33PM |
| 16 | books sell a lot in the fall       | 12:33PM |
| 17 | season for Christmas gift giving.  | 12:33PM |

|    |                                  |         |
|----|----------------------------------|---------|
| 18 | But basically it's more          | 12:33PM |
| 19 | around things we do in sales     | 12:33PM |
| 20 | related to promotions and        | 12:33PM |
| 21 | Halloween books sell best during | 12:33PM |
| 22 | Halloween.                       | 12:33PM |

23 BY MS. LANIER: 12:33PM

|    |   |                                       |         |
|----|---|---------------------------------------|---------|
| 24 | Q | Okay. So it would be                  | 12:33PM |
| 25 |   | variable, then, when peak sales would | 12:33PM |

1 occur for a title? 12:33PM

2 A It could be. 12:34PM

3 Q Has PRH studied when peak 12:34PM

4 circulation at libraries occurs for 12:34PM

5 e-Books relative to when a title is 12:34PM

6 published? 12:34PM

7 A We have tried to study that. 12:34PM

8 Again, it's hard to get conducive 12:34PM

9 information because a lot of that 12:34PM

10 information is either in an aggregate 12:34PM

11 that's not always -- it's more 12:34PM

12 directional. 12:34PM

13 Q What do you mean by "more 12:34PM

14 directional"? 12:34PM

15 A You can't get exact numbers 12:34PM

16 from stuff like you can from book 12:34PM

17 store sales that are going on that are 12:34PM

18 directly things that are sold directly 12:34PM

19 from our -- we sell direct to book 12:34PM

20 stores. We do not sell direct 12:34PM

21 necessarily to libraries. 12:34PM

22 Q Do aggregators provide PRH 12:34PM

23 with circulation information? 12:35PM

24 A They do, yes. They can. 12:35PM

25 Q Is the circulation data that 12:35PM

|    |  |         |
|----|--|---------|
| 1  | aggregators provide to PRH, does that  | 12:35PM |
| 2  | enable PRH to conduct this kind of     | 12:35PM |
| 3  | analysis?                              | 12:35PM |
| 4  | A It's difficult because the           | 12:35PM |
| 5  | data is not presented easily in a way. | 12:35PM |
| 6  | There is no way -- there's not a way   | 12:35PM |
| 7  | for me to easily pull out chunks of    | 12:35PM |
| 8  | information which is purposeful on     | 12:35PM |
| 9  | that information.                      | 12:35PM |
| 10 | Also, it depends on if the             | 12:35PM |
| 11 | library refuses to share it. Again,    | 12:35PM |
| 12 | it's a transaction between the         | 12:35PM |
| 13 | aggregator.                            | 12:35PM |
| 14 | Q When you say the data is             | 12:35PM |
| 15 | difficult to pull out, is that because | 12:35PM |
| 16 | of the way it's formatted or is it     | 12:35PM |
| 17 | encrypted? I'm just not sure I'm       | 12:35PM |
| 18 | understanding.                         | 12:35PM |
| 19 | A It's the way the platform is         | 12:35PM |
| 20 | created. It's not related to           | 12:35PM |
| 21 | encryption. It's just the ease of      | 12:35PM |
| 22 | use.                                   | 12:36PM |
| 23 | Q Got it. Based on the                 | 12:36PM |
| 24 | analysis PRH has been able to do about | 12:36PM |
| 25 | circulation data, is there a time      | 12:36PM |

|    |                                       |         |
|----|---------------------------------------|---------|
| 1  | relative to when a title is published | 12:36PM |
| 2  | where circulation peaks?              | 12:36PM |
| 3  | A Factors are similar to that         | 12:36PM |
| 4  | in the consumer world. So if it's a   | 12:36PM |
| 5  | movie that's coming out or if it's -- | 12:36PM |
| 6  | if it is a TV show that's coming out  | 12:36PM |
| 7  | or if it's a new book by an author,   | 12:36PM |
| 8  | all of those could be factors.        | 12:36PM |
| 9  | The work we do is basically           | 12:36PM |
| 10 | trying to look at -- we've never been | 12:36PM |
| 11 | able to look at it holistically.      | 12:36PM |
| 12 | There is no way to get a picture of   | 12:36PM |
| 13 | all the library activity that goes on | 12:36PM |
| 14 | in the United States.                 | 12:36PM |
| 15 | Q Okay. So if I'm                     | 12:36PM |
| 16 | understanding your explanation        | 12:37PM |
| 17 | correctly, factors that would affect  | 12:37PM |
| 18 | circulation of a title would also     | 12:37PM |
| 19 | affect factors of revenue for that    | 12:37PM |
| 20 | title; is that accurate?              | 12:37PM |
| 21 | A Potentially, it can.                | 12:37PM |
| 22 | Q Okay. When would it not?            | 12:37PM |
| 23 | A When would it not? Well,            | 12:37PM |
| 24 | you can't conclusively say based      | 12:37PM |
| 25 | upon -- we don't have conducive data  | 12:37PM |

1 to really bring out that point. 12:37PM

2 Q Okay. So you mentioned 12:37PM

3 seasonal factors having an effect. 12:37PM

4 A Uh-huh. 12:37PM

5 Q You mentioned I think the 12:37PM

6 type of book might have an effect. 12:37PM

7 What other factors might 12:37PM

8 affect circulation numbers relative to 12:37PM

9 data publication or revenue relative 12:37PM

10 to data publication? 12:38PM

11 A It would be availability of 12:38PM

12 the title in open archive because we 12:38PM

13 don't necessarily see the circulation 12:38PM

14 data that library -- the library -- we 12:38PM

15 don't get that data, what is 12:38PM

16 circulated, by that particular library 12:38PM

17 if it's -- if they have that book 12:38PM

18 available from that piece. 12:38PM

19 So we do see that that has 12:38PM

20 the harm to our marketplace. 12:38PM

21 So there could be factors to 12:38PM

22 where circulation we may see is down 12:38PM

23 but that may be attributed to the 12:38PM

24 patrons are getting and circulating 12:38PM

25 and downloading that book from 12:38PM

1 Internet Archive instead of going 12:38PM  
2 through their legitimate means. 12:38PM  
3 Q Does PRH have any data to 12:38PM  
4 suggest that fluctuations in 12:38PM  
5 circulation or revenue are tied to 12:38PM  
6 titles being available on the Internet 12:38PM  
7 Archive? 12:38PM  
8 MS. STEINMAN: Objection. 12:38PM  
9 Go ahead. 12:38PM  
10 THE WITNESS: It's just 12:39PM  
11 common knowledge. If it's 12:39PM  
12 available someplace else -- if 12:39PM  
13 somebody is looking for it and 12:39PM  
14 it's available someplace else for 12:39PM  
15 them to check out, because it's 12:39PM  
16 not available from the library, it 12:39PM  
17 stands to reason that people who 12:39PM  
18 are wanting to read it will 12:39PM  
19 download it where they can get it. 12:39PM  
20 That patron, if they can't 12:39PM  
21 find it on their library's 12:39PM  
22 website, will go to Internet 12:39PM  
23 Archive and see it there and 12:39PM  
24 download it. 12:39PM  
25

1 BY MS. LANIER: 12:39PM

2 Q Do you have evidence that 12:39PM

3 that occurred? 12:39PM

4 A I would say it's common 12:39PM

5 sense that if a reader wants to read, 12:39PM

6 they're going to try to find how to 12:39PM

7 read the book. 12:39PM

8 Q Okay. So you don't have 12:39PM

9 evidence then apart from common sense? 12:39PM

10 MS. STEINMAN: Objection. 12:39PM

11 Go ahead, Skip. 12:39PM

12 THE WITNESS: I don't 12:39PM

13 have -- I don't have any evidence. 12:39PM

14 BY MS. LANIER: 12:39PM

15 Q We sort of started talking 12:39PM

16 about this a little bit, but I do want 12:39PM

17 to talk about other factors that might 12:40PM

18 affect how a title would perform both 12:40PM

19 in terms of revenue and circulation. 12:40PM

20 Might the fact that -- I'll 12:40PM

21 list some ideas. You tell me if that 12:40PM

22 might affect a title or not. 12:40PM

23 The identity of the author 12:40PM

24 and whether the author has published a 12:40PM

25 book before? 12:40PM

1 MS. STEINMAN: Objection. 12:40PM  
2 Go ahead. 12:40PM  
3 THE WITNESS: Can I ask you 12:40PM  
4 for clarification? 12:40PM  
5 MS. LANIER: Please. 12:40PM  
6 THE WITNESS: I apologize. 12:40PM  
7 I don't understand what you're 12:40PM  
8 asking when you -- can you ask 12:40PM  
9 again that question that you're 12:40PM  
10 wanting answers to your variety of 12:40PM  
11 situations that you're going to 12:40PM  
12 relay? 12:40PM  
13 I apologize, I just didn't 12:40PM  
14 grasp the two in my head. 12:40PM  
15 BY MS. LANIER: 12:40PM  
16 Q No trouble at all. Happy to 12:40PM  
17 do it. It was an inartfully worded 12:40PM  
18 question, so I'll take another stab at 12:40PM  
19 it. 12:40PM  
20 A Okay. 12:40PM  
21 Q So I'm trying to get a sense 12:40PM  
22 of factors that might affect how a 12:40PM  
23 title will perform commercially. 12:40PM  
24 Revenue, circulation, you 12:41PM  
25 mentioned earlier that sometimes the 12:41PM



1 same factors might affect each. 12:41PM  
2 So I just wanted to get a 12:41PM  
3 sense from you of factors based on 12:41PM  
4 your experience, long experience in 12:41PM  
5 publishing that might affect how a 12:41PM  
6 title performs or how popular a title 12:41PM  
7 is. 12:41PM  
8 Can you think of examples of 12:41PM  
9 factors? 12:41PM  
10 MS. STEINMAN: Objection to 12:41PM  
11 form. Go ahead. 12:41PM  
12 THE WITNESS: I mean, I 12:41PM  
13 don't know how -- I'll list -- I 12:41PM  
14 have a list that's an arm long or 12:41PM  
15 longer, your arm or mine or both, 12:41PM  
16 of factors that played into it. 12:41PM  
17 So I don't -- the other 12:41PM  
18 stuff would be speculation at this 12:41PM  
19 point. If I knew, then it would 12:41PM  
20 be a lottery ticket that I would 12:41PM  
21 need to play because then I could 12:42PM  
22 have and get some stuff. 12:42PM  
23 But there is a myriad of 12:42PM  
24 factors, not least of -- it's the 12:42PM  
25 author, the topic, publicity, 12:42PM

|    |  |         |
|----|--|---------|
| 1  | marketing, promotion.                  | 12:42PM |
| 2  | BY MS. LANIER:                         | 12:42PM |
| 3  | Q Okay. Would it be accurate           | 12:42PM |
| 4  | to say that some of the myriad of      | 12:42PM |
| 5  | factors to which you alluded might     | 12:42PM |
| 6  | affect revenue for one title but not   | 12:42PM |
| 7  | another?                               | 12:42PM |
| 8  | A That, again, is it's                 | 12:42PM |
| 9  | possible; but again, it's hard to be   | 12:42PM |
| 10 | specific because the -- again,         | 12:42PM |
| 11 | overthinking your question is that     | 12:42PM |
| 12 | what you're saying -- each of them are | 12:42PM |
| 13 | different. If you have a title,        | 12:42PM |
| 14 | specific title you want to talk about, | 12:42PM |
| 15 | if I know about it, I can speculate.   | 12:42PM |
| 16 | But that's not really what             | 12:42PM |
| 17 | I'm here to do. I'm -- I'll just       | 12:42PM |
| 18 | telling you what I know, so...         | 12:43PM |
| 19 | Q Do you ever -- strike that.          | 12:43PM |
| 20 | Let's back up.                         | 12:43PM |
| 21 | Are you aware of any                   | 12:43PM |
| 22 | forecasting or projection of how much  | 12:43PM |
| 23 | revenue a title will earn that's done  | 12:43PM |
| 24 | at PRH?                                | 12:43PM |
| 25 | A I know that we do basically          | 12:43PM |

1 P&Ls for each of our titles, yes. I 12:43PM  
2 do know that. 12:43PM  
3 Q At what stage in the 12:43PM  
4 publication of the title does that P&L 12:43PM  
5 occur? 12:43PM  
6 MS. STEINMAN: Objection, 12:43PM  
7 assumes -- go ahead. 12:43PM  
8 THE WITNESS: This is not my 12:43PM  
9 expertise. I mean, I'm not in the 12:43PM  
10 acquisition piece of it. 12:43PM  
11 I know that it's part of the 12:43PM  
12 acquisition process. Where it 12:43PM  
13 comes in that acquisition process 12:43PM  
14 and the decision, that's the 12:43PM  
15 decision of the publishers to 12:43PM  
16 make. 12:43PM  
17 So the decisions they make 12:43PM  
18 are their decisions they make for 12:44PM  
19 their publishing division. 12:44PM  
20 BY MS. LANIER: 12:44PM  
21 Q So when you say "acquisition 12:44PM  
22 process," is that before PRH gets the 12:44PM  
23 rights to publish a title? 12:44PM  
24 A I'm talking about when they 12:44PM  
25 sit down and decide if they want to 12:44PM

|    |  |         |
|----|--|---------|
| 1  | acquire a book, there is a whole       | 12:44PM |
| 2  | process in place that they go through. | 12:44PM |
| 3  | Just as if you're wanting to           | 12:44PM |
| 4  | go and buy a car, there is a process   | 12:44PM |
| 5  | that you go through to assess what     | 12:44PM |
| 6  | kind of car you want to buy.           | 12:44PM |
| 7  | Q Got it. So what data, what           | 12:44PM |
| 8  | factors does PRH look at when putting  | 12:44PM |
| 9  | together a P&L in the acquisition      | 12:44PM |
| 10 | phase of the title?                    | 12:44PM |
| 11 | MS. STEINMAN: Objection.               | 12:44PM |
| 12 | You can ask Mr. Dye whether he is      | 12:44PM |
| 13 | involved and/or he does this, but      | 12:44PM |
| 14 | you can't ask him what PRH does on     | 12:44PM |
| 15 | this topic.                            | 12:44PM |
| 16 | This is so far beyond what             | 12:44PM |
| 17 | he does in his daily work and he's     | 12:44PM |
| 18 | not a 30(b)(6) witness on this         | 12:45PM |
| 19 | topic.                                 | 12:45PM |
| 20 | BY MS. LANIER:                         | 12:45PM |
| 21 | Q Please answer the question,          | 12:45PM |
| 22 | Mr. Dye.                               | 12:45PM |
| 23 | A This is not my -- I mean,            | 12:45PM |
| 24 | it's not my -- this is not what I do.  | 12:45PM |
| 25 | You know, I -- as I said               | 12:45PM |

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|----|--|---------|
| 1  | earlier, I'm involved in the           | 12:45PM |
| 2  | pediatrician side. The kid is already  | 12:45PM |
| 3  | born. I'm not in the whole creation    | 12:45PM |
| 4  | side.                                  | 12:45PM |
| 5  | So I really can't speak to             | 12:45PM |
| 6  | that.                                  | 12:45PM |
| 7  | Q Okay. What kind of analysis          | 12:45PM |
| 8  | does PRH do when it's considering what | 12:45PM |
| 9  | licensing structures to use to convey  | 12:45PM |
| 10 | e-Books?                               | 12:45PM |
| 11 | MS. STEINMAN: Objection.               | 12:45PM |
| 12 | Go ahead, Skip.                        | 12:45PM |
| 13 | THE WITNESS: Again,                    | 12:45PM |
| 14 | Ms. Lanier, I'm confused by your       | 12:45PM |
| 15 | question. It may be terminology        | 12:46PM |
| 16 | in my head. I'm sorry.                 | 12:46PM |
| 17 | BY MS. LANIER:                         | 12:46PM |
| 18 | Q No problem.                          | 12:46PM |
| 19 | A So there is no -- they are           | 12:46PM |
| 20 | not related in my viewpoint. But --    | 12:46PM |
| 21 | so that's why I'm having difficulty    | 12:46PM |
| 22 | answering that question because I see  | 12:46PM |
| 23 | them as not -- it's two different      | 12:46PM |
| 24 | things, two different -- I don't know  | 12:46PM |
| 25 | if I'm explaining myself well.         | 12:46PM |

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|----|------------------|------------------------------------|--------|
| 1  | Q                | What was the name of the           | 7:22PM |
| 2  |                  | attorney that you made that        | 7:22PM |
| 3  |                  | communication to?                  | 7:22PM |
| 4  | A                | It would be Carolyn Foley.         | 7:22PM |
| 5  | Q                | When was that communication        | 7:22PM |
| 6  |                  | made?                              | 7:22PM |
| 7  | A                | I do not know exactly.             | 7:22PM |
| 8  | Q                | Where was it made?                 | 7:22PM |
| 9  | A                | Probably here in my house on       | 7:22PM |
| 10 |                  | a video conversation with her.     | 7:22PM |
| 11 |                  | MS. LANIER: Mr. Dye, I want        | 7:22PM |
| 12 |                  | to thank you for giving us your    | 7:22PM |
| 13 |                  | time today. I know it was a tough  | 7:22PM |
| 14 |                  | day, and for reasons hopefully not | 7:22PM |
| 15 |                  | all tethered to the lawsuit.       | 7:22PM |
| 16 |                  | It is not a fun experience         | 7:22PM |
| 17 |                  | to be deposed, but I hope we made  | 7:22PM |
| 18 |                  | it as painless as possible for     | 7:23PM |
| 19 |                  | you. Thank you for your time       | 7:23PM |
| 20 |                  | today, sir.                        | 7:23PM |
| 21 |                  | MS. STEINMAN: I'm going to         | 7:23PM |
| 22 |                  | do a short redirect.               | 7:23PM |
| 23 |                  | EXAMINATION                        | 7:23PM |
| 24 | BY MS. STEINMAN: |                                    | 7:23PM |
| 25 | Q                | Mr. Dye, has the Internet          | 7:23PM |

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| 1  | Archive created current harm to PRH?   | 7:23PM |
| 2  | A Yes.                                 | 7:23PM |
| 3  | Q What type of harm?                   | 7:23PM |
| 4  | A They are acting as an                | 7:23PM |
| 5  | aggregator. They are basically taking  | 7:23PM |
| 6  | our content, distributing it without   | 7:23PM |
| 7  | paying any fees related to it.         | 7:23PM |
| 8  | They are also hurting our              | 7:23PM |
| 9  | library direct sales by instructing    | 7:23PM |
| 10 | libraries that it's okay to scan books | 7:23PM |
| 11 | that they have, physical books that    | 7:23PM |
| 12 | they have on the shelves and offer     | 7:23PM |
| 13 | them up through controlled digital     | 7:23PM |
| 14 | lending.                               | 7:23PM |
| 15 | They are also affecting us             | 7:23PM |
| 16 | in our consumer sales. The consumer    | 7:23PM |
| 17 | can go and find the book available on  | 7:23PM |
| 18 | Internet Archive and download it for   | 7:23PM |
| 19 | free without paying any cost back to   | 7:24PM |
| 20 | the right holder or to the publisher   | 7:24PM |
| 21 | and/or the author.                     | 7:24PM |
| 22 | Q And if Internet Archive has          | 7:24PM |
| 23 | not paid an aggregator license fee for | 7:24PM |
| 24 | all the books available for            | 7:24PM |
| 25 | downloading on open library, is that   | 7:24PM |

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|----|--|--------|
| 1  | evidence of harm to Penguin Random     | 7:24PM |
| 2  | House?                                 | 7:24PM |
| 3  | A Yes. You've lost that                | 7:24PM |
| 4  | income.                                | 7:24PM |
| 5  | Q Has Internet Archive                 | 7:24PM |
| 6  | provided all the data to Penguin       | 7:24PM |
| 7  | Random House that it would need to     | 7:24PM |
| 8  | accurately calculate the harm to       | 7:24PM |
| 9  | Penguin Random House from Internet     | 7:24PM |
| 10 | Archive?                               | 7:24PM |
| 11 | A No, they have not.                   | 7:24PM |
| 12 | Q What data would that                 | 7:24PM |
| 13 | include?                               | 7:24PM |
| 14 | A I would need to know the             | 7:24PM |
| 15 | circulation of all people at Random    | 7:24PM |
| 16 | House titles that are on and available | 7:24PM |
| 17 | and have been distributed illegally by | 7:24PM |
| 18 | Internet Archive, whether they be      | 7:24PM |
| 19 | through a loan or a person has         | 7:24PM |
| 20 | downloaded it and kept it for that --  | 7:24PM |
| 21 | it's data that we would need for all   | 7:25PM |
| 22 | ISBNs because there's multiple         | 7:25PM |
| 23 | versions of the same title but         | 7:25PM |
| 24 | different ISBNs.                       | 7:25PM |
| 25 | MS. STEINMAN: Thank you.               | 7:25PM |



1 I, LYNNE M. LEDANOIS, a Certified  
2 Shorthand Reporter of the State of  
3 California, do hereby certify:

4 That the foregoing proceedings were  
5 taken before me at the time and place herein  
6 set forth; that a record of the proceedings  
7 was made by me using machine shorthand which  
8 was thereafter transcribed under my  
9 direction; that the foregoing transcript is a  
10 true record of the testimony given.

11 Further, that if the foregoing  
12 pertains to the original transcript of a  
13 deposition in a Federal Case, before  
14 completion of the proceedings, review of the  
15 transcript [X] was [] wasn't requested.

16 I further certify I am neither  
17 financially interested in the action nor a  
18 relative or employee of any attorney or party  
19 to this action.

20 IN WITNESS WHEREOF, I have this  
21 date subscribed my name.

22 Dated: 11/22/2021

23   
24

LYNNE MARIE LEDANOIS

25 CSR No. 6811